

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL MAHAN,

Defendant-Appellant.

UNPUBLISHED

March 20, 2003

No. 239188

Wayne Circuit Court

LC No. 97-008851

Before: Cooper, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from an order denying his motion to correct his presentence investigation report (“PSIR”). Defendant was sentenced to one to five years’ imprisonment for his conviction of attempted possession with intent to deliver less than fifty grams of cocaine. MCL 333.7401(2)(a)(iv); MCL 750.92. We affirm.

On appeal, defendant argues that the PSIR contained inaccurate information because it indicated that he was on parole when the instant offense occurred. He claims that the Michigan Department of Corrections (“MDOC”) relied on this allegedly inaccurate information and continued to incarcerate him, despite the fact that his sentence for the instant offense was discharged on January 29, 2002.

Generally, a defendant may not challenge the accuracy of a presentence report on appeal unless the issue was raised at or before sentencing or he demonstrates that the challenge was brought as soon as the inaccuracy could have reasonably have been discovered. MCR 6.429(C); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996). In the instant case, defendant failed to challenge the accuracy of the PSIR at the plea hearing or at sentencing. We note that at the plea hearing, defendant entered his plea on the basis that he violated his 1994 parole. Furthermore, at sentencing, defendant failed to assert that his parole status, as indicated in the PSIR, was inaccurate. Rather, defendant emphasized that the PSIR indicated that his “parole supervision” had concluded before he committed the instant offense. Consequently, to avoid forfeiture under the plain error rule, defendant must show that the error was plain and affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Before a person convicted of a felony is sentenced, the probation officer must prepare a written PSIR for the court’s use. MCL 771.14(1); MCR 6.425(A); *People v Johnson*, 203 Mich

App 579, 587-588; 513 NW2d 824 (1994). If the trial court finds that challenged information in the PSIR is inaccurate or irrelevant, that finding must be made part of the record and the information must be corrected or stricken from the report. MCL 771.14(6); MCR 6.425(D)(3)(a); *People v Hoyt*, 185 Mich App 531, 533-534; 462 NW2d 793 (1990).

Defendant cannot establish prejudice in this case because the lower court record reveals that the MDOC had an independent basis for its decision that defendant violated his parole. The MDOC performed a review of defendant's convictions and determined that defendant committed a parole violation on April 3, 1997, before either his probation or parole supervision was discharged. The MDOC has exclusive jurisdiction over parole matters. MCL 791.204(b); *White-Bey v Dep't of Corrections*, 239 Mich App 221, 225; 608 NW2d 833 (1999). "Each prisoner on parole shall remain in the legal custody and under the control of the [MDOC]." MCL 791.238(1). A paroled prisoner is only deemed to have served his full sentence when he performs all of the conditions and obligations of his parole for a fixed period of time and complies with the parole board's rules and regulations. MCL 791.242. At such time, "the parole board shall enter a final order of discharge and issue to the paroled prisoner a certificate of discharge." MCL 791.242.

The record indicates that defendant had three prior convictions, including a possession conviction for which he received a sentence of one to twenty years' imprisonment. According to MCL 768.7a:

(2) If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.

Defendant was still serving out the original sentence imposed upon him at the time of his parole violations, and therefore is subject to continued incarceration past the discharge date for the instant offense.

In sum, the MDOC did not rely on the PSIR, but rather made its own determination that defendant was on parole.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Kirsten Frank Kelly